

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: AVANDIA MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION

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2007-MD-1871

THIS DOCUMENT RELATES TO:
ALL ACTIONS

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HON. CYNTHIA M. RUFE

**PRE-TRIAL ORDER NO. UNDER RULE 502(d) OF THE FEDERAL
RULES OF EVIDENCE**

WHEREAS, in an effort to reduce the number of documents that would otherwise require adjudication by the Special Discovery Master and potential review by this Court in accordance with this Court's September 10, 2009 Order, SmithKlineBeecham Corporation d/b/a GlaxoSmithKline ("GSK") has agreed to produce, subject to the entry of a non-waiver order under Rule 502(d) of the Federal Rules of Evidence, approximately 56 documents (including duplicates), which were among the approximately 120 documents that were reviewed by the Special Discovery Master in connection with his Seventh Report and Recommendation; and

WHEREAS, GSK shall also designate all such documents as "Confidential" under Pre-Trial Order No. 10 in this case;

IT IS HEREBY ORDERED as follows:

1. **Non-Waiver.** GSK's production of the approximately 56 documents, which it agreed to produce in a September 15, 2009 meeting with the Special Discovery Master, shall not constitute a waiver of any privilege or protection with respect to: (a) those documents;

(b) any other communications or documents relating to the subject matter of those documents; or

(c) any other communications or documents relating to the parties who sent or received or are named in those documents. This Order is, and shall be construed as, an Order under Rule 502(d) of the Federal Rules of Evidence ordering that privilege or protection is not waived by disclosure connected with the litigation pending before this Court. Accordingly, as is explicitly set forth in Rule 502(d), the production of these documents is not a waiver of any privilege or protection in any other federal or state proceeding. Without limiting the foregoing, the existence of this Order shall not in any way impair or affect GSK's legal right to assert privilege claims for the documents produced in any other actions, shall not effect a waiver, and shall not be used to argue that any waiver of privilege or protection has occurred by virtue of any production of these documents in this case before this Court or any other Court or in any other litigation or proceeding.

2. **Use of the Documents Produced.** Any use of the documents produced by GSK under this non-waiver order shall be subject to all of the provisions of Pre-Trial Order No. 10 in this case.

3. **Security of Protected Documents.** Counsel of record shall keep all documents produced by GSK in accordance with this Order within their exclusive possession and control and in separate files or in separate databases. Counsel of record shall maintain the confidentiality of such materials and information, and shall not permit unauthorized dissemination of such materials to any person or entity.

4. **Designation by GSK.** GSK shall designate the 56 documents produced under this non-waiver order by marking on the documents substantially the following words:

“CONFIDENTIAL - FOR USE IN *IN RE AVANDIA MDL* UNDER PROTECTIVE ORDER AND SUBJECT TO NON-WAIVER ORDER UNDER F.R.E. 502(d), IN *IN RE AVANDIA MDL*, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, NO. 2007-MD-1871.”

SO ORDERED, this _____ day of _____, 2009.

Date: _____